



11 CFR Part 112

[NOTICE 2023-13]

Artificial Intelligence in Campaign Ads

AGENCY: Federal Election Commission.

ACTION: Notification of Availability of Petition for Rulemaking.

SUMMARY: The Commission announces its receipt of a Petition for Rulemaking filed by Public Citizen. The Petition asks the Commission to amend its regulation on fraudulent misrepresentation of campaign authority to make clear that the related statutory prohibition applies to deliberately deceptive Artificial Intelligence campaign ads.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at <https://sers.fec.gov/fosers/>, reference REG 2023-02.

Each commenter must provide, at a minimum, his or her first name, last name, city and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Robert M. Knop, Assistant General Counsel, or Ms. Jennifer Waldman, Attorney, 1050 First Street, NE., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On July 13, 2023, the Commission received a Petition for Rulemaking (“Petition”) from Public Citizen, a non-profit advocacy organization. The Petition asks the Commission to amend its regulation on “fraudulent misrepresentation” at 11 CFR 110.16 to clarify that “the restrictions and penalties of the law and the Code of Regulations are applicable” should “candidates or their agents fraudulently misrepresent other candidates or political parties through deliberately false [Artificial Intelligence]-generated content in campaign ads or other communications.” Petition at 5.

The Federal Election Campaign Act (the “Act”) provides that a candidate for federal office, employee, or agent of such a candidate shall not “fraudulently misrepresent” themselves or any committee or organization under their control “as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof.” 52 U.S.C. 30124(a)(1).

The Petition asserts that generative Artificial Intelligence and deepfake technology, is being “used to create convincing images, audio and video hoaxes.” Petition at 2. The Petition asserts that while the technology is not so far advanced currently as for viewers to not be able to identify when it is used disingenuously, if the use of the “technology continues to improve, it will become increasingly difficult, and perhaps, nearly impossible for an average person to distinguish deepfake videos and audio clips from authentic media.” *Id.*

The Petition notes that the technology will “almost certainly create the opportunity for political actors to deploy it to deceive voters[,] in ways that extend well

beyond any First Amendment protections for political expression, opinion or satire.” *Id.* According to the Petition, this technology might be used to “create a video that purports to show an opponent making an offensive statement or accepting a bribe” and, once disseminated, be used for the purpose of “persuading voters that the opponent said or did something they did not say or do.” *Id.* The Petition explains that a deepfake audio clip or video by a candidate or their agent would violate the fraudulent misrepresentation provision by “falsely putting words into another candidate’s mouth, or showing the candidate taking action they did not [take],” thereby “fraudulently speak[ing] or act[ing] ‘for’ that candidate in a way deliberately intended to [harm] him or her.” *Id.* at 3. The Petitioner states that because the deepfaker misrepresents themselves as speaking for the deepfaked candidate, “the deepfake is fraudulent because the deepfaked candidate in fact did not say or do what is depicted by the deepfake and because the deepfake aims to deceive the public.” *Id.* The Petitioner draws a distinction between deepfakes, which it contends violates the prohibition on fraudulent misrepresentation, and other uses of Artificial Intelligence in campaign communications, such as in parodies, where the purpose and effect are not to deceive voters, or as in other communications where “there is a sufficiently prominent disclosure that the image, audio or video was generated by [A]rtificial [I]ntelligence and portrays fictitious statements and actions.” *Id.* at 4.

The Commission seeks comment on the Petition. The public may inspect the Petition on the Commission’s website at <http://www.fec.gov/fosers/>.

The Commission will not consider the Petition’s merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the Federal Register.

Dated: August 10, 2023.

On behalf of the Commission,

Dara S. Lindenbaum,
Chair,
Federal Election Commission.

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